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No. 06-

IN THE

Supreme Court of the United States

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Under the First Amendment, as interpreted by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944), does a federal district court lack jurisdiction to adjudicate a claim, where the claim depends on proof of the truth or falsity of religious beliefs?

2. Does a federal District Court lack jurisdiction to entertain an action under the Racketeer Influenced and Corrupt Organizations Act (RICO), where the plaintiff's claim requires proof of the truth or falsity of religious beliefs and where there is no allegation of financial loss on the part of the plaintiff caused by the defendant's conduct?

3. Where the assertion of jurisdiction by a federal District Court infringes upon freedom of religion, does the resulting irreparable injury nullify the discretion that would ordinarily exist in a United States Circuit Court of Appeals to deny summarily a petition for a writ of mandamus?

LIST OF PARTIES TO THIS PROCEEDING

The petitioners are defendants named in the case of *Kachavos v. Ewing*, case number CV05-7197 GPS (FMOx), in the United States District Court for the Central District of California. They are Saint Matthew's Churches, Inc., James Eugene Ewing, Milton Ray McElrath, Sr., Milton Ray McElrath, Jr., Deborah McElrath, J.C. Joyce, Elisabeth Anne Rooney Ewing, and Donald R. Luce.

The United States District Court for the Central District of California is named as a respondent, since the Court was named as a respondent in the mandamus proceedings in the United States Court of Appeals for the Ninth Circuit, *In Re Saint Matthew's Churches, Inc., et al. v. United States District Court*, Ninth Circuit case number 06-71204.

The other respondent is Ms. Valerija Kachavos, the sole plaintiff in the District Court, and the sole real party in interest in the Ninth Circuit.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES TO THIS PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	v
TABLE OF APPENDICES	vi
INTRODUCTION	1
CITATIONS OF OPINIONS AND ORDERS	2
JURISDICTIONAL STATEMENT	2
CONSTITUTIONAL PROVISION INVOLVED ...	3
STATEMENT OF THE CASE	3
REASON FOR GRANTING PETITION	5
I. No Court in the United States of America Has Subject Matter Jurisdiction to Adjudicate a Claim That Involves Proof of the Truth or Falsity of Religious Beliefs, and Any Such Claim Must Be Dismissed	5

Contents

Page

II. No Court Has Jurisdiction to Entertain a Claim Under the Racketeer Influenced and Corrupt Organizations Act (RICO), Where the Claim Requires Proof of the Truth or Falsity of Religious Beliefs and Where the Defendants' Alleged Wrongful Conduct Did Not Proximately Cause Any Financial Loss to the Plaintiff 8

III. Where a Federal District Court Has Exercised Jurisdiction in Violation of a Defendant's Constitutional Rights, Immediate Irreparable Harm Results, Thereby Depriving a Circuit Court of Appeals of the Discretion to Deny a Petition for a Writ of Mandamus Without Reaching the Merits of the Constitutional Issues Presented 9

IV. Conclusion 10

TABLE OF CITED AUTHORITIES

Page

Federal Cases:

Anza v. Ideal Steel Supply Corp., __ U.S. __, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006) 8

Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977) 4, 9

Branti v. Finkel, 445 U.S. 507 (1980) 10

Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) 9, 10

United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944) ..... i, 5, 6, 7, 8

State Cases:

Tilton v. Marshall, 925 S.W.2d 672 (Texas Supreme Court,1996) 10

Federal Constitutional Provisions, Statutes, and Rules:

Constitution of the United States, First Amendment 1, 3, 10

Racketeer Influenced and Corrupt Organization Act (RICO) ..... *passim*

28 U.S.C. § 1254 2

Federal Rules of Civil Procedure, rule 12(b)(6) ... 1

TABLE OF APPENDICES

Page

Appendix A — Order Of The United States Court Of Appeals For The Ninth Circuit Filed June 23, 2006 ..... 1a

Appendix B — Civil Minutes - General Dated November 21, 2005 ..... 3a

INTRODUCTION

The petitioners are a church and seven individuals affiliated with it. Their religious freedom, guaranteed by the First Amendment to the Constitution of the United States, has been violated by the maintenance of a lawsuit in which the plaintiff seeks to prove the falsity of the church's religious beliefs. The lawsuit has been brought under the Racketeer Influenced and Corrupt Organizations Act (RICO) by a fired former employee of the church. The predicate acts under RICO alleged by the disgruntled former employee involve alleged mail fraud and wire fraud as to church members, rather than injury to business or property of the plaintiff herself caused by the defendants' wrongful conduct. The plaintiff was not a church member.

In the District Court, the defendants moved to dismiss, pursuant to rule 12 (b)(6) of the *Federal Rules of Civil Procedure*. The District Court denied the motion. The defendants filed a Petition for a Writ of Mandamus, which was denied by the United States Court of Appeals for the Ninth Circuit, but not on the merits.

The petitioners in this Court contend that the decisions of the District Court and Ninth Circuit are erroneous, in light of this Court's opinions. The Supreme Court of the United States has clearly held that no Court has jurisdiction to adjudicate the truth or falsity of religious beliefs. This Court has also held that no RICO claim can be maintained in the absence of injury to the plaintiff's business or property proximately caused by the conduct of the defendants, thus negating jurisdiction. Finally, the Supreme Court has

ruled that deprivation of a constitutional right, even for a short time, represents irreparable harm. The existence of irreparable harm nullifies the discretion of a circuit court to deny a petition for a writ of mandamus where the deprivation of a constitutional right has occurred, according to the Ninth Circuit's case law.

CITATIONS OF OPINIONS AND ORDERS

This Petition for a Writ of Certiorari arises from a civil RICO action pending in the United States District Court for the Central District of California, *Kachavos v. Saint Matthew's Churches, Inc.*, CV05-7197 GPS (FMOx). The defendants' Motion to Dismiss was denied in an unpublished order entered on December 5, 2005. [Appendix B.]

On March 1, 2006, the defendants filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the Ninth Circuit, case number 06-71204. This petition was denied in an unpublished order filed on June 23, 2006. [Appendix A.]

JURISDICTIONAL STATEMENT

Jurisdiction was invoked pursuant to 28 U.S.C. section 1254. The United States Court of Appeal for the Ninth Circuit has denied a petition for a writ of mandamus. [Appendix A.] The Ninth Circuit found that "[p]etitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus." [Appendix A.] The Circuit Court did not find that the District

Court properly concluded that it had the jurisdiction to adjudicate the truth or falsity of religious beliefs.

CONSTITUTIONAL PROVISION INVOLVED

In pertinent part, the First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

STATEMENT OF THE CASE

On October 4, 2005, plaintiff Valerija Kachavos filed a civil RICO complaint against petitioners in the United States District Court for the Central District of California, *Kachavos v. Saint Matthew's Churches, Inc.*, case number CV05-7197 GPS (FMOx). She asserted RICO violations, but all of her allegations involved the claimed falsity of the religious doctrines and beliefs of Saint Matthew's Churches, Inc. She alleged that the defendants fraudulently claimed that God put people in the church ministry in touch with each other. She also claimed that the defendants fraudulently represented that their Covenant Prayer Cup was sent at the direction of the Holy Spirit. Through such false representations, it was claimed, the defendants engaged in wire fraud and mail fraud.

The threshold issue before the District Court, raised by the defendants in their Motion to Dismiss, was whether a court has the jurisdiction to adjudicate the truth or falsity of religious beliefs so as to determine the plaintiff's case.

The second major issue raised by the Motion to Dismiss was whether the plaintiff's complaint stated a RICO claim, in view of the absence of injury to the business or property of the plaintiff caused by the conduct of the defendants.

Surprisingly, the District Court denied the defendants' Motion to Dismiss, without a reasoned explanation. [Appendix B.]

The defendants filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the Ninth Circuit on March 1, 2006, case number 06-71204. In this petition, the defendants renewed their jurisdictional arguments and claimed irreparable harm in having to defend their religious beliefs in court. Months later, the Ninth Circuit denied the Petition in a brief Order filed June 23, 2006. [Appendix A.] The full text of the Order is as follows:

> Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied. All pending motions are denied as moot.
>
> No motions for reconsideration, rehearing, clarification, or any other submissions shall be filed or entertained in this closed docket.

[Appendix A.]

In light of this Order, it was impossible for the petitioners to seek rehearing.

In this Petition for a Writ of Certiorari, petitioners claim that the rulings of the District Court and the Ninth Circuit are directly inconsistent with the opinions of the Supreme Court of the United States. Petitioners seek the intervention of this Court, in order to preserve religious liberty, to prevent a secular court from adjudicating matters of religious belief, to avoid abuse of RICO by plaintiffs not suffering financial loss at the hands of the defendant, and to clarify the scope of the jurisdiction of a United States Court of Appeals to deny mandamus where there is irreparable harm as a matter of law.

REASON FOR GRANTING PETITION

I. No Court in the United States of America Has Subject Matter Jurisdiction to Adjudicate a Claim That Involves Proof of the Truth or Falsity of Religious Beliefs, and Any Such Claim Must Be Dismissed.

In *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944), the defendants were indicted and convicted of using, and conspiring to use, the United States mails to defraud. It was charged that "certain designated corporations were formed, literature distributed and sold, funds solicited, and memberships in the I Am movement sought 'by means of false and fraudulent representations, pretenses, and promises.'" 322 U.S. at 79. All of these alleged false and fraudulent representations covered the defendants' "alleged religious doctrines or beliefs." 322 U.S. at 79. Among the representations were the claims that Mr. Donald Ballard and Ms. Edna W. Ballard "had, by reason of supernatural attainments, the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments." 322 U.S. at 80. It was

alleged in the indictment that the defendants knew that each representation was false, and each was made in order to defraud persons of money, property, and other things of value, and to convert these items to the use and benefit of the defendants. 322 U.S. at 80.

The defendants in the *Ballard* case were convicted after a jury trial.

The key portion of this court's opinion in *Ballard* is as follows:

> [W]e do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. 'The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.' *Watson v. Jones*, 13 Call. 679, 728, 20 L.Ed. 666. The First Amendment has a dual aspect. It not only 'forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S.CT. 900, 903, 84 L.Ed. 1213, 128 A.L.R. 1352. 'Thus the Amendment embraces two concepts,-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.' *Id.*, 310 U.S. at pages 303, 304 S.Ct. at page 903, 84 L.Ed. 1213, 128 A.L.R. 1352. Freedom of thought, which includes freedom of religious

> belief, is basic in a society of free men. *West Virginia State Board of Education by Barnette*, 319 U.S.624, 63 S.Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.

322 U.S. at 86-87.

The case was then remanded for further proceedings consistent with this Court's decision. 322 U.S. at 88.

The *Ballard* case is directly on point with respect to the present lawsuit brought by plaintiff Valerija Kachavos. She

alleges that the defendants fraudulently solicited funds, not from her but from church members, by making false promises of a supernatural character. These matters rest on religious doctrine and belief. Since *Ballard* holds that no court has jurisdiction to adjudicate the truth or falsity of religious beliefs, then no court has jurisdiction to decide the truth or falsity of the plaintiff's allegations. Subject matter jurisdiction is therefore absent, requiring dismissal of the case.

II. No Court Has Jurisdiction to Entertain a Claim Under the Racketeer Influenced and Corrupt Organizations Act (RICO), Where the Claim Requires Proof of the Truth or Falsity of Religious Beliefs and Where the Defendants' Alleged Wrongful Conduct Did Not Proximately Cause Any Financial Loss to the Plaintiff.

In their Petition for a Writ of Mandamus, the defendants argued that plaintiff Valerija Kachavos lacks standing to pursue her purported RICO claim because she had failed to allege any injury to her business or property caused by the conduct of the defendants and because no court has jurisdiction to decide a RICO claim if it requires adjudication of the truth or falsity of religious beliefs.

On June 5, 2006, this Court handed down its decision in *Anza v. Ideal Steel Supply Corp.*, __ U.S. __, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006). In this case, the Court upheld the petitioners' view of the law, ruling that a direct injury caused by the defendant, representing harm to the plaintiff's business or property, is required to state a RICO claim. Here, there is no such allegation. Rather, the plaintiff alleges fraudulent

religious representations to large numbers of people other than herself. She has no cause of action and no standing to pursue her claim, and jurisdiction is therefore absent.

III. Where a Federal District Court Has Exercised Jurisdiction in Violation of a Defendant's Constitutional Rights, Immediate Irreparable Harm Results, Thereby Depriving a Circuit Court of Appeals of the Discretion to Deny a Petition for a Writ of Mandamus Without Reaching the Merits of the Constitutional Issues Presented.

In its Order denying mandamus, the United States Court of Appeals did not reject the petitioners' contentions on the merits. The court did not rule that the District Court has jurisdiction to adjudicate the truth or falsity of religious beliefs. The Ninth Circuit did not find that the plaintiff had adequately pleaded a RICO cause of action, in spite of the absence of a predicate act and in spite of the absence of financial harm to the plaintiff. Rather, the Ninth Circuit simply cited its own decision in *Bauman v. United States District Court*, 557 F.2d 650 (1977).

In *Bauman*, the Ninth Circuit identified "five specific guidelines" governing the exercise of discretion with respect to petitions for extraordinary writs. 557 F.2d at 654-655. In this case, all five of the guidelines were satisfied as a matter of law, except perhaps the first and most important of them, the existence of irreparable harm making a future appeal inadequate. In citing *Bauman* and in denying mandamus, the Ninth Circuit ruled in a manner inconsistent with this Court's decision in *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49

L.Ed.2d 547 (1976), overruled in part on other grounds by *Branti v. Finkel*, 445 U.S. 507 (1980).

In *Elrod*, this Court ruled that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." 427 U.S. 347, 373, 96 S.Ct. 2673, 2690.

It is respectfully submitted that, under *Elrod*, the continued maintenance of the *Kachavos* lawsuit represents irreparable harm to the defendants in the District Court and the petitioners here. In view of this irreparable harm, the Ninth Circuit did not have the discretion to refuse to protect the petitioners' First Amendment freedoms.

In *Tilton v. Marshall*, 925 S.W.2d 672 (1996), the Supreme Court of Texas held that mandamus relief was required in order to prevent adjudication by a lower court of the truth or falsity of religious beliefs. This Court should make the same ruling. The Supreme Court of the United States should continue to protect religious liberty, as enshrined in the First Amendment.

IV. Conclusion.

For all of the foregoing reasons, the petitioners respectfully request that the Supreme Court of the United States grant this petition and review the matter. Their religious freedom is at stake.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JUNE 23, 2006

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-71204

D.C. No. CV-05-7197-GPS
Central District of California, Los Angeles

In re: SAINT MATTHEW'S CHURCHES, INC.

SAINT MATTHEW'S CHURCHES, INC.; et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

VALERIJA KACHAVOS,

Real Party in Interest.

ORDER

Before: CANBY, T.G. NELSON and KLEINFELD, Circuit Judges.

Appendix A

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied. All pending motions are denied as moot.

No motions for reconsideration, rehearing, clarification, or any other submissions shall be filed or entertained in this closed docket.

APPENDIX B — CIVIL MINUTES - GENERAL
DATED NOVEMBER 21, 2005

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 05-7197-GPS(FMOx)

CIVIL MINUTES - GENERAL

Valerija Kachavos

v.

James Eugene Ewing, et al

Present: The Honorable GEORGE P. SCHIAVELLI,
United States District Judge

Krista Barrett	Rosalyn Adams	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs: Joseph E. Deems

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Proceedings:

PLAINTIFF'S MOTION FOR PERMANENT INJUNCTION (filed 10/17/05) DEFENDANTS' MOTION TO STRIKE CERTAIN NUMBERED PARAGRAPHS OF PLAINTIFF'S COMPLAINT AS IMMATERIAL TO PLAINTIFF'S CAUSE OF ACTION, etc.; MOTION FOR MORE DEFINITE STATEMENT; MOTION TO DISMISS (filed 10/21/05)

Appendix B

Court hears argument.

Plaintiff's motion for permanent injunction is denied. Pursuant to counsels' stipulation in open Court, documents are to be maintained in form produced and not to be tampered with absent further order of the Court.

Defendants' motions are denied. Defendants may have 30 days to answer.

Initials of Preparer [illegible]

(3)

No. 06-195

File
9/6/06

IN THE

SUPREME COURT OF THE UNITED STATES

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents

On Petition For A Writ of Certiorari To The United States Court of Appeal For The Ninth Circuit

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF CASE	1
III. ARGUMENT	
A. STATUTES INVOLVED: STANDARD OF REVIEW	
1. United States Constitution, Amendment One	3
2. The Racketeering Influenced and Corrupt Organizations Act	5
3. Mail Fraud Statute 18 U.S.C. 1341	6
B. SAINT MATTHEW'S CHURCHES AND ITS "ALIAS" ORGANIZATIONS ARE ENTERPRISES UNDER RICO	
1. RICO Is a Neutral, Generally Applicable Law, And Therefore Does Not Violate the First Amendment	7
2. Petitioners' Assertion That Their Criminal Enterprise Is a "Church" With a Creed Which Cannot Be Disturbed By This Court Is a Red Herring to Obfuscate Their Predicate Acts of Mail Fraud	12
3. Respondent Has Standing to Sue Under RICO	14
IV. CONCLUSION	15

TABLE OF AUTHORITIES

Case	Page
Braunfeld v. Brown, 366 U.S. 599 (1961)	4
Cantwell v. Connecticut, 310 U.S. 296 (1940)	7
Church By Mail v. Commissioner of the Internal Revenue, 765 F. 2d 187 (9th Circuit 1985)	13
Church by Mail v. United States, WL 13356 , CV-87-0754-LFO (D.C. Circuit 1989)	13
Diaz v. Gates, 420 F. 3d 897 (9th Circuit 2005)	15
Gillette v. United States, 401 U.S. 437 (1971)	4
Goldman v. Weinberger, 474 U.S. 503 (1986)	7
Guerro v. Gates, 110 Supp. 2d 1287 (C.D. Cal. 2000)	15
Hernandez v. Commissioner, 490 U.S. 680 (1989)	4
H.J. Inc. v. Northwestern Bell Tel. Co., 294 U.S. 229 (1989)	5
Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258 (1992)	5
Hunt v. Weatherbee, 626 F. Supp. 1097 (D. Mass. 1986)	15
Jimmy Swaggert Ministries v. Board of Education, 493 U.S. 378 (1990)	8
Kann v. United States, 323 U.S. 88 (1944)	6
Khurana v. Innovative Health Care Systems, 130 F. 3d 143 (5th Circuit 1997)	14
Lemon v. Kurtzman, 403 U.S. 602 (1971)	8

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 14

Minersville School District Board of Education v. Gobitis, 310 U.S. 586 (1940) 4

NOW v. Scheidler, 510 U.S. 249 (1994) 15

Pereira v. Hubbard, 374 U.S. 705 (1954) 6

Prince v. Massachusetts, 321 U.S. 158 (1944) 4

Reynolds v. United States, 98 U.S. 145 (1878) 3

Russello v. United States, 464 U.S. 16 (1983) 5

Sadighi v. Daghighfekr, 36 F. Supp. 2d (D.S.C. 1999) 15

Schmuck v. United States, 489 U.S. 705 (1989) 6

Sedima v. Imrex, 473 U.S. 479 (1985) 5

Sherbert v. Verner, 383 U.S. 398 (1963) 4

State v. Massey, 336 U.S. 942 (1949) 7

Thomas v. Review Board, 450 U.S. 707 (1981) 4

United States v. Ballard, 322 U.S. 78 (1944) 11

United States v. Lee, 455 U.S. 252 (1982) 3

Wisconsin v. Yoder, 406 U.S. 205 (1972) 3

Statutes

18 U.S.C. 1341 6

18 U.S.C. 1951 2

18 U.S.C. 1959	2
18 U.S.C. 1961-1968	5
18 U.S.C. 1962 (a)	5
18 U.S.C. 1962(b)	5
26 U.S.C. 170 (b)(1)(A)(I)	13
26 U.S.C. 170 (c)(2)(B)	12
18 U.S.C. 1964	5

I. INTRODUCTION

The within RICO action is absolutely not an "ecclesiastical" dispute. The Complaint is replete with factual allegations of specific acts of mail fraud and wire fraud. None of the predicate acts initiate any "religious" or spiritual interpretations, which is why the District Court denied Petitioners' Motions and the 9th Circuit denied the Petition for the Writ of Mandamus, following briefing on a *dilatory* motion filed by Petitioners. (Other frivolous delay motions had already been denied by the District Court.)

As a neutral and generally applicable law, RICO does not violate the First Amendment. There is no case law or legal precedent to support Petitioners' contentions that RICO is somehow unconstitutional when applied to predicate acts of mail fraud involving "conduct," to be distinguished from religious beliefs. Petitioners appear to be asking this Court for some kind of "denominational protection" that will allow them to solicit funds using the United States Mail for their racketeering enterprises because they claim their malfeasance was done for "religious reasons."

II. STATEMENT OF CASE

Respondent, Valerija Kachavos, filed the instant RICO action against Petitioners on October 4, 2005, in the United States District Court for the Central District of California, alleging violations of RICO, conspiracy to violate RICO,

aiding and abetting RICO activities involving 1.7 million (1,700,00) acts of mail fraud and over one (1,000,000) million acts of wire fraud. Ms. Kachavos also alleges violations of the Hobbs Act (18 U.S.C. 1951), and the Violent Crimes in Aid of Racketeering Activities Act (18 U.S.C. 1959). She pleaded State of California pendant claims for Common Law Fraud, Defamation, and Intentional Infliction of Emotional Distress.

Factually, Ms. Kachavos alleges that the individually named Petitioners conducted a multi-million dollar direct mail scheme targeting the impoverished and illiterate using various aliases, including "Saint Matthew's Churches" (a purported non-profit) in order to launder funds to their "profit making" businesses. The Complaint contains specific factual allegations as to how the Petitioners fraudulently induced the unwitting Respondent into a harmful employment situation (by directly involving her in the Criminal Enterprise) which has caused permanent damage to her professional reputation, rendering her unemployable in her profession, with a loss of legitimate business opportunities. Further, Ms. Kachavos alleges that Petitio rs threatened her with physical violence to prevent her from exposing their unlawful behavior to Federal authorities, including the fact that this so-called "church" sued her in State Court claiming that she stole their "trade secrets."

III. ARGUMENT

A. STATUTES INVOLVED: STANDARD OF REVIEW

1. United States Constitution, Amendment One

This Court has consistently held that an individual's religious beliefs do not excuse him from compliance with an otherwise valid law prohibiting conduct that the Government is free to regulate. As early as 1878, in *Reynolds v. United States,* (98 U.S. 145), the Supreme Court established the principle that while the right to believe is absolute, the right to act is not. The Court ruled that a segment of society could not in the name of religious freedom under the First Amendment, avoid compliance with society's law prohibiting polygamy:

> " Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinion, they may with practices.....Can a man excuse his practices to the contrary because of religious beliefs? To permit this would be to make the professed doctrines of religious beliefs superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.* at 166-167.

Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law prescribes (or proscribes) conduct that his religion prescribes (or proscribes). (*United States v. Lee*, 455 U.S. 252 [1982] (the state may justify a limitation on religious freedom by showing that it is essential to accomplish an overriding governmental interest.) See also:

Wisconsin v. Yoder, 406 U.S. 205 [1972] (compulsory school attendance); *Sherbert v. Verner*, 374 U.S. 398 [1963] (denial of unemployment benefits to applicant who refused to accept work requiring her to violate the Sabbath); *Gillette v. United States*, 401 U.S. 437 [1971] (sustained military Selective Service System); *Thomas v. Review Board*, 450 U.S. 707 [1981] (denial of unemployment benefits to applicant whose religion forbade him to fabricate weapons); *Prince v. Massachusetts*, 321 U.S. 158 [1944, (mother could be prosecuted under child labor laws for using her children to dispense religious literature in the streets); *Braunfeld v. Brown*, 366 U.S. 599 [1961] (upheld Sunday-closing laws); *Hernandez v. Commissioner*, 490 U.S. 680 [1989] (rejecting free exercise challenge to payment of income taxes alleged to make religious activities more difficult).

As Justice Frankfurter stated in *Minersville School District Board of Education v. Gobitis,* 310 U.S. 586 (1940):

> "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities."

2. The Racketeering Influenced and Corrupt Organizations Act (RICO)

RICO was enacted as Title IX of the Organized Crime Control Act (OCCA) of 1970 (P.L. No. 91-452, 901, 84 Stat. 922, 942 [1970]; codified as amended, 18 U.S.C. 1961-1968 [2000].) The statute provides enhanced criminal and civil remedies against any violator who uses or abuses an enterprise through a pattern of racketeering activity. Congress passed RICO in an effort "to provide new weapons of unprecedented scope for an assault on organized crime and its economic roots." (*Russello v. United States*, 464 U.S. 16 [1983]) "By including a private right of action in RICO, Congress intended to bring the pressure of private attorney generals on a serious national problem for which prosecutorial resources were deemed inadequate." (*Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258 [1992].)

Section 904(a), Stat. 947 of the OCCA directs that "the provisions of this Title shall be liberally construed to effectuate its remedial purposes." (*Russello*, supra at 27.) " RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, but also of its express admonition that RICO is to be liberally construed to effectuate its remedial purposes." (*Sedima v. Imrex*, 473 U.S. 479 [1985].)

Although 18 U.S.C. 1964(c) creates a civil cause of action, the racketeering activity giving rise to RICO liability must be criminal in nature. In *H.J. Inc. v.*

Northwestern Bell Tel. Co., (294 U.S. 229 [1989]), this Court noted that predicate acts must (1) pose a threat of continued criminal activity; (2) Congress was concerned with long term criminal conduct; and, (3) Congress drafted RICO broadly enough to encompass a wide range of criminal activity. To be criminal, conduct must be committed with the *mens rea* appropriate to the offense.

3. Mail Fraud

Pursuant to 18 U.S.C 1341, mail fraud involves (1) the existence of a scheme to defraud, and (2) using or causing the use of the mails in furtherance of the scheme. Section 1341 covers "those limited instances in which the use of the mails is part of the fraud." (*Kann v. United States*, 323 U.S. 88 [1944].) The relationship between the actual mailing and the fraudulent scheme is close enough if the defendant knows, "that the use of the mails will follow in the ordinary course of business, or where such use can be reasonably foreseen, even though not actually intended." (*Pereira v. Hubbard*, 347 U.S. 1 [1954].) In other words, mailings that are "incident to an essential part of the scheme or fraud" or "a step in the plot" fall under the mail fraud statute. (*Schmuck v. United States*, 489 U.S. 705 [1989].)

B. SAINT MATTHEW'S CHURCHES AND IT'S "ALIAS" ORGANIZATIONS ARE ENTERPRISES UNDER RICO

1. RICO Is a Neutral, Generally Applicable Law, and Therefore Does Not Violate the First Amendment

The free exercise clause of the First Amendment prohibits legislation of religious beliefs. Petitioners erroneously argue that Congress lacks any authority to legislate with respect to any religious activity or conduct. In *Cantwell v. Connecticut* (310 U.S. 296 [1940]), this Court stated:

> " Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury."

Statutes are not invalid simply because they affect the operation of a religious organization. (*Thomas*, supra at 707.) There is no question that laws may greatly burden religious conduct. A neutral, generally applicable law may be applied to religious conduct. Fundamentalists in Tennessee may not handle snakes in Church (*State v. Massy*, 229 N.C. 734 S.E. 2d 179, appeal dismissed, 336 U.S. 942[1949]). Orthodox Jews may not wear yarmulkes in the Armed Forces (*Goldman v. Weinberger*, 474 U.S. 503[1986]). Mormons in Utah may not legally practice polygamy (*Reynolds*, supra at 166-167). A law is "neutral" if it has a secular purpose that the government is free to regulate and neither advances

nor inhibits religion (*Jimmy Swaggart Ministries v. Board of Education*, 493 U.S. 378 [1990]). A law is "generally applicable" if it applies neutrally to all members of society (*Swaggart*, supra at 391-392).

In *Lemon v. Kurtzman* (403 U.S. 602 [1971]), this Court articulated a three-part test to support a finding that a statute does not violate the Establishment Clause. First, the statute must have a secular purpose. Second, its principal or primary effect must be one that neither advances or inhibits religion. Third, the statute must not foster an excessive government entanglement with religion.

RICO has an obvious secular legislative purpose to eliminate racketeering activity. Its primary effect neither advances or inhibits religion. The question therefore, is whether applying RICO in the circumstances of this case would foster an impermissible government entanglement with religious doctrine. The answer is clearly, "No!" The issues in this case are whether Petitioners involved Respondent in a racketeering enterprise that caused damage to her business and property. None of the pleaded Claims would require the Court to evaluate religious doctrine or the reasonableness of the "religious practices." Indeed, Petitioners have failed to state exactly what religious practices they want this Court to protect.

Petitioners' use of the mail to fraudulently induce unsuspecting donors to send them money does not require any spiritual or ecclesiastical inquiry.

Petitioners use the United States Mail to send out millions of letters each year soliciting money for "prayer requests." Petitioners target the impoverished, the illiterate and the elderly who are vulnerable and easily victimized. The unsuspecting donors complete the "prayer request" forms sent to them, listing their needs (i.e., better health for themselves and their family members, money a new roof, education for their children, food, etc.,) and return the requests to Petitioners with a money offering, believing that the purported "ministers" at SMC are going to pray on their behalf. Petitioners deposit the funds in their bank accounts and live opulent lifestyles on the donations. Then they incinerate the "prayer requests." (The prayer requests are incinerated so there will be no record for the Internal Revenue Service.) There is the need for an inquiry into religious doctrine or a spiritual interpretation in this scenario?

Respondent respectfully submits the following analogy to the Court. The "Maryknoll" Missionary Fathers solicit funds via the United States Mail, offering to conduct "Masses" for the sick, elderly or those souls who have passed away. The Fathers send "Mass cards" to those who donate. The difference between the Maryknolls and Petitioners is that the priests actually do what they promise---they conduct a Mass and pray. Assuming arguendo, that the Maryknolls did not conduct the Masses, and if subsequently investigated for mail fraud, would that require an inquiry into Catholic doctrine? No, it would not be an intrusion into

Catholicism by the Government, as it would be an inquiry into criminal conduct.

Petitioners misrepresent to this Court that Ms. Kachavos' assertion that SMC does not receive the addresses of prospective donors through divine intervention is false, and goes to the truth or validity of religious beliefs (Petition, pages 3-4):

> " She asserted RICO violations, but all of her allegations involved the claimed falsity of the religious doctrines and beliefs of Saint Matthew's Churches. She alleged that he defendants fraudulently claimed that God put the people in the church ministry in touch with one another. She also claimed that the defendants fraudulently represented that their Covenant Prayer Cup was sent at the direction of the Holy Spirit. Through false representations, it was claimed, the defendants engaged in wire fraud."

Petitioner Milton Ray McElrath Senior, has already admitted in the Los Angeles Superior Court (*Saint Matthew's Churches v. Kachavos*) that divine inspiration was not the source of the names and addresses on SMC's "membership list." SMC filed a lawsuit in the Superior Court alleging that Ms. Kachavos had stolen its "church membership list" and that said list was a trade secret. Ms. Kachavos asserts that said action is a SLAPP suit (Strategic Lawsuit Against Public Participation) filed to prevent her from turning over SMC's "membership list" (which is really a computerized donor analysis of mail solicitation responses) to Federal authorities (the I.R.S. and United States Postal Inspector), and to destroy her credibility should she later be called upon to testify

against Petitioners. During trial, McElrath testified that the names and addresses on SMC's "membership list" had been "rented" from public direct mail vendors, after SMC acquired United States Census Bureau data to target poor inner city and rural neighborhoods for solicitations. Essentially, in order to win the SLAPP suit, McElrath had to admit under oath, there was no divine intervention in obtaining the names and addresses of potential donors, but rather a very non-devine computer data list from a Government agency. It is clear that Petitioners have different arguments for different Courts, and the veracity of said arguments is of little concern to them. Currently Petitioners are before the State of California Court of Appeal, Second Appellate Division arguing that SMC's "membership list" is a "trade secret," and they are before this Court arguing that God is in the trade secrets business.

Further, Petitioners misstate that Ms. Kachavos has alleged their misrepresentations of who gave them the prospective donors names constitutes "wire fraud." Respondent has alleged that Petitioners engaged in commercial inter-state wire transactions of donors' funds which constitute predicate acts of wire fraud in furtherance of their racketeering activities.

Petitioners reliance on *United States v. Ballard* (322 U.S. 78 [1944]) is misplaced. *Ballard* is factually distinguishable from the instant action. Ms. Kachavos has alleged that Petitioners solicited money via the United States Mail

for "prayer requests." Unsuspecting donors sent Petitioners money, expecting said requests to be prayed over. Instead of praying over the "prayer requests" as promised, Petitioners incinerated them. Petitioners' predicate acts of mail fraud are not based in religious doctrine or beliefs. The donors simply did not get what they paid for.

Like the Ballards, "Reverend" Ewing's tent revivals involve claims of supernatural powers. He has raised people from the dead and cured all kinds of illnesses. Respondent is not questioning anyone's right to believe in "Reverend" Ewing's "divine powers." If people want to believe "Reverend" Ewing can raise people from the dead, that is their right under the First Amendment. However, when "Reverend" Ewing uses the mail to fleece innocent victims, then it becomes a matter of conduct, not belief. As this Court stated in *Ballard*, " Thus the Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. (*Id.* at 303.)

2. Petitioners' Assertions That Their Criminal Enterprise Is a Church With a Creed Which Cannot Be Disturbed By This Court Is a Red Herring to Obfuscate Their Predicate Acts of Mail Fraud.

First, and foremost, Saint Matthew's Churches (also known as Reverend Ewing's Evangelistic Ministries, Church of Compassion, Church and Bible Study in the Home By Mail, and Saint Matthew's Publishing) is not a "church." It is a

non-profit organization pursuant to Internal Revenue Code (I.R.C.) 26 U.S.C. 170 (c)(2)(B) which states it is:

> "organized and operated for religious, charitable, scientific, literary or educational purposes, or to foster national or international amateur sports competitions, or for the prevention of cruelty to children or animals."

Essentially, SMC has the same tax designation as the Special Olympics, the Young Mens' Christian Association (YMCA), and the Society for Prevention of Cruelty to Animals (SPCA). The SPCA and Special Olympics cannot commit mail fraud and then hide behind the First Amendment, and neither can Petitioners.

Further, it should be noted that the Internal Revenue Service has not granted SMC "church" status under I.R.C. 26 U.S.C. 170 (b)(1)(A)(i). The lack of "church" designation is of great import because the Government denies organizations "church" status that do not have a cognizable "creed!" SMC's alias and predecessor organizations were not granted "church" status either.

Respondent respectfully requests that this Court review prior decisions by the Ninth Circuit and D.C. Circuit wherein both Courts have determined that Petitioners' other enterprises were not "churches." (*Church by Mail v. Commissioner of the Internal Revenue*, 765 F. 2d 187 [9th Circuit 1985] and *Church by Mail v. The United States*, on review from the Tax Court and Ninth Circuit, WL 13356, cv-87-0754-LFO [D.C. Circuit 1989].)

3. Respondent Has Standing to Sue Under RICO

Ms. Kachavos has invoked Federal jurisdiction, therefore she must establish the "irreducible constitutional minimum of standing." (*Lujan v. Defenders of Wildlife*, 504 U.S. 555[1992].) Respondent has alleged a concrete, actual injury in lost wages. Ms. Kachavos' loss of income was directly and proximately caused by Petitioner's racketeering activity. The award of monetary damages will redress the injury of lost wages and damage to her professional career.

Petitioners erroneously argue that Ms. Kachavos' allegations of lost employment and wages under 18 U.S.C. (a) and 18 U.S.C. (b) are for wrongful termination. Respondent alleged that Petitioners employed her using income derived from their racketeering activity to facilitate their ongoing criminal enterprise. Petitioners fraudulently induced Ms. Kachavos into harmful employment, which ultimately left her unemployable.

Further, Ms. Kachavos alleged that she detrimentally relied on Petitioners' fraudulent representations as to the legitimacy of their "churches and charities" which caused her to forego other legitimate career opportunities.

Loss of employment benefits, loss of business opportunities and damage to one's professional reputation have all been held to constitute cognizable injuries to business and property for purposes of RICO, so long as the injuries were proximately caused by racketeering activity. See: *Khurana v. Innovative Health*

Care Systems. Inc. (130 F. 3d 143 [5th Circuit 1997]); *Sadighi v. Daghighfekr* (36 F. Supp. 2d 279 [D.S.C. 1999]); *Guerro v. Gates* (110 Supp. 2d 1287 [C.D.Cal. 2000]); *Hunt v. Weatherbee* (626 F. Supp. 1097 [D. Mass. 1986]); *NOW v. Scheidler* (510 U.S. 249 [1994]).

The Ninth Circuit Court of Appeals, *en banc*, determined in *Diaz v. Gates* (420 F. 3d 897 [2005]) that lost employment is an injury to property interest and that California law protects the legal entitlement to both current and prospective contractual relations:

> "There is similarly no room in the statutory language for an additional amorphous requirement that, for an injury to be to business or property, the business or property interest have been the 'direct target' of the predicate act. The statute is broad, but that is the statute we have. Were the standard as the dissent claims, we would have the anomalous result that one could be liable under RICO for destroying a business if one aimed a bomb at it, but not if one aimed at the business owner, missed and hit the business by accident, or if one aimed at the business owner who happened to be in the business at the time."

IV. CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court deny Petitioners' Writ for Certiorari.

DATED: September 5, 2006

By _____
Joseph E. Deems, Attorney for
Respondent Valerija Kachavos

No. 06-195

IN THE

SUPREME COURT OF THE UNITED STATES

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents

PROOF OF SERVICE

I, JOSEPH E. DEEMS, do swear and declare that on this date, September 6, 2006, as required by the United States Supreme Court Rule 19, I have served the enclosed **Respondent's Opposition to Petition for Writ of Certiorari**, on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail Properly Addressed to each of them and with First Class Postage.

The names and addresses of those served are as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 6, 2006

By _____
Joseph E. Deems, Attorney for
Respondent, Valerija Kachavos

FILED
AUG 18 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-195

IN THE

Supreme Court of the United States

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

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v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to rule 29.6 of the Rules of the Supreme Court of the United States, Saint Matthew's Churches, Inc., states that there is no parent corporation and there is no publicly held company that owns 10% or more of any corporate stock.

TABLE OF CONTENTS

	Page
Corporate Disclosure Statement	i
Table of Contents	ii
Table of Cited Authorities	iii
Legal Argument	1
I. The Plaintiff Has Failed to Demonstrate That Any Claim of Hers of Wrongful Secular Conduct Can Be Adjudicated Without Proof of the Truth or Falsity of Religious Doctrines, and Thus Jurisdiction Is Lacking	1
II. The Plaintiff Has Failed to Demonstrate a Direct Relationship Between the Alleged Racketeering Activity of the Defendants and the Harm Now Claimed by Her	3
III. Plaintiff Has Failed to Address the Issue of Circuit Court Discretion Where Lack of Jurisdiction and Irreparable Injury Are Shown	4
IV. The Plaintiff's Improper Arguments Concerning the Status and Practices of Saint Matthew's Churches, Inc., Must Be Rejected	5
Conclusion	8

TABLE OF CITED AUTHORITIES

Page

Federal Cases

Anza v. Ideal Steel Supply Corp., __ U.S. __, 126 S. Ct. 1991, 164 L. Ed. 2d 720 (2006) 3, 4

Church By Mail, Inc. v. Commissioner of Internal Revenue, 765 F.2d 1387, 56 A.F.T.R.2d 85-5483 (1984) 5

In re United States Catholic Conference v. Baker, 885 F.2d 1020 (2d Cir 1989) 6

Holmes v. Securities Investor Production Corporation, 503 U.S. 258, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992) 4

Khurana v. Innovative Healthcare Systems, Inc., 130 F.3d 143 (5th Cir. 1987) 3, 4

Teel v. Khurana, 525 U.S. 979, 119 S. Ct. 442, 142 L. Ed. 2d 444 (1988) 4

United States v. Ballard, 322 U.S. 78, 64 S. Ct. 888, 88 L.Ed. 1148 (1944) 1, 2

Docketed Case

St. Matthew Publishing, Inc. v. The United States, No. 970569T 6

Cited Authorities

Page

Federal Statutes and Authorities

26 U.S.C. § 170(c) 6

26 U.S.C. § 501 6

26 U.S.C. § 501(c) 5, 6

18 U.S.C. § 1961-1968 (2000), Racketeer Influenced and Corrupt Organizations Act (RICO) 3

Rules of the Supreme Court of the United States, rules 15(5) and 15(6) 1

Rules of the Supreme Court of the United States, rule 29.6 i

LEGAL ARGUMENT

Pursuant to rules 15(5) and 15(6) of the Rules of the Supreme Court of the United States, the petitioners, Saint Matthew's Churches, Inc., James Eugene Ewing, Milton Ray McElrath, Milton Ray McElrath, Jr., Deborah McElrath, J.C. Joyce, Elizabeth Ann Rooney Ewing, and Donald R. Luce, respectfully submit this reply to the brief filed by plaintiff and respondent Valerija Kachavos in opposition to their petition for a writ of certiorari. The opposition brief fails to offer any valid reasons why certiorari should be denied. It should be granted because:

I.

The Plaintiff Has Failed to Demonstrate That Any Claim of Hers of Wrongful Secular Conduct Can Be Adjudicated Without Proof of the Truth or Falsity of Religious Doctrines, and Thus Jurisdiction Is Lacking.

Religious freedom is guaranteed by the First Amendment to the Constitution of the United States. As interpreted by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 888, 88 L. Ed. 1148 (1944), such freedom prohibits the exercise of jurisdiction by any secular court over an issue involving the truth or falsity of religious doctrines and beliefs.

In her opposition brief, plaintiff and respondent Valerija Kachavos (hereinafter "plaintiff") cites many general principles of First Amendment jurisprudence. The government, of course, may regulate conduct through laws of neutral general applicability. This principle applies even to religiously motivated conduct, such as engaging in

polygamy, handling snakes in church, or wearing particular clothing. In such cases, of course, it is necessary only to litigate whether the conduct occurred, not whether particular religious doctrines or beliefs are valid.

The plaintiff's case here is based on alleged fraudulent representations concerning matters of religious doctrine and belief. It is claimed that, for example, the defendants fraudulently represented that the people in its church ministry were brought together by God. The truth or falsity of such a representation cannot be determined except by resort to finding particular religious doctrines and beliefs to be true or false.

The plaintiff, in her opposition brief, has failed to identify even a single allegation in her pleadings that does not involve proof with respect to matters of religion. In some cases, conduct can be evaluated without considering beliefs, but this is not such a case. No one on earth can prove that God answers prayers or does not do so.

In their petition for a writ of certiorari, the defendants argued that there is no jurisdiction to resolve this case, under the rule established by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 888, 88 L. Ed. 1148 (1944). There has been no effective response to this contention. Certiorari should be granted, so as to enforce the protection of religious freedom afforded by this decision. When this Court has decided that no secular court may determine the truth or falsity of religious doctrine and beliefs, lower courts are required to follow this ruling.

II.

The Plaintiff Has Failed to Demonstrate a Direct Relationship Between the Alleged Racketeering Activity of the Defendants and the Harm Now Claimed by Her.

Plaintiff Valerija Kachavos appears to argue that the defendants contend that the Racketeer Influenced and Corrupt Organizations Act (RICO), codified as amended, 18 U.S.C. 1961-1968 (2000), is unconstitutional. No such argument is made in the petition for a writ of certiorari. Rather, it is argued that the plaintiff has failed to allege any injury to her business or property caused by the conduct of the defendants that is proscribed by RICO. Such a requirement has been recognized by many decisions of this court, such as the recent case of *Anza v. Ideal Steel Supply Corp.*, __ U.S. __, 126 S. Ct. 1991, 164 L. Ed. 2d 720 (2006).

In her opposition brief, the plaintiff apparently contends that she has suffered actual injury in the form of lost wages and that such loss of income was directly and proximately caused by the defendants' alleged racketeering activity. However, the plaintiff's own complaint negates any such possibility. She does not allege that the claimed predicate acts of mail and wire fraud injured her or that she parted with anything of value as a result of these acts. She does not allege that she was ever a church member, that she received mail from the church, or that she ever mailed a prayer request to the church. She just does not allege any injury directly to her resulting from the alleged racketeering conduct.

The plaintiff relies on *Khurana v. Innovative Healthcare Systems, Inc.*, 130 F.3d 143 (5th Cir. 1987), and its progeny,

but fails to mention that this Court vacated *Khurana*. *See Teel v. Khurana*, 525 U.S. 979, 119 S. Ct. 442, 142 L. Ed. 2d 444 (1988). Clearly, *Khurana* and its progeny do not state the law. The plaintiff here has no standing to pursue a RICO claim. Any possibility of standing is nullified by this Court's decisions, including *Holmes v. Securities Investor Production Corporation*, 503 U.S. 258, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992), and *Anza v. Ideal Steel Supply Corporation*, __ U.S. __, 126 S. Ct. 119, 164 L. Ed. 2d 720 (2006).

Certiorari is necessary, in order to avoid a Federal District Court exercising jurisdiction over a RICO claim, where the plaintiff has no standing to pursue such a claim, according to this Court's decisions.

III.

Plaintiff Has Failed to Address the Issue of Circuit Court Discretion Where Lack of Jurisdiction and Irreparable Injury Are Shown.

In addition to challenging jurisdiction to decide issues of religious beliefs and challenging the standing of a plaintiff not injured by alleged racketeering activity to maintain a RICO action, the defendants presented a third issue in their petition for a writ of certiorari. They asked this court to decide whether a United States Circuit Court of Appeals may summarily deny a petition for a writ of mandamus, where a Federal District court lacks jurisdiction and where irreparable injury is threatened. It is claimed that, under these circumstances, there is no discretion to deny a petition for a writ of mandamus.

In her brief in opposition, the plaintiff has not even mentioned the defendants' third issue. Thus, in effect, she has conceded the validity of the defendants' position on this issue.

IV.

The Plaintiff's Improper Arguments Concerning the Status and Practices of Saint Matthew's Churches, Inc., Must Be Rejected.

The plaintiff claims that Saint Matthew's Churches, Inc., is not a church and directs the Court's attention to prior decisions of the Ninth Circuit Court of Appeals and the United States District Court for the District of Columbia. Both of the cases cited relate to a separate and distinct entity known as Church By Mail, Inc. The plaintiff falsely states that "both courts determined that Petitioners' other enterprises [*sic*] were not churches." (Brier In Opposition, page 13). In footnote one in *Church By Mail, Inc. v. Commissioner of Internal Revenue*, 765 F.2d 1387, 1398, 56 A.F.T.R.2d 85-5483, 5485, the Court specifically states, "[W]e need not reach the question whether the Church is a 'church' within the meaning of section 170(b)(1)(A)(1)." Petitioners also direct the Court's attention to Footnote 28 in *Church By Mail, Inc. v. Commissioner of Internal Revenue*, T.C. Memo. 1984-349, 1984 WL 14998 (U.S. Tax Ct.), 48 T.C.M. (CCH) 471, wherein the Court stated as follows:

> Ministries (now Saint Matthew's Churches, the petitioner herein, as a result of corporate name change) received a letter from respondent, dated 31, 1979, granting it exempt status under Section 501(c)(3). As far as the record herein shows,

> Ministries' exempt status has not been revoked. Since that letter antedated petitioner's application for exemption and Ministries is not a party to this proceeding, we express no opinion as to the continued validity of Ministries' exempt status.

The good faith character of Saint Matthew's Churches was established by the judgment of the Federal Court of Claims in *St. Matthew Publishing, Inc. v. The United States*, No. 970569T. That judgment in pertinent part states as follows:

> "It is Ordered and Adjudged this date, pursuant to Rule 58, that:
>
> > (2) beginning June 1, 1981, plaintiff is an organization described in 26 U.S.C. § 501(c)(3) which is exempt from tax under 26 U.S.C. § 501(a), and an organization described in 26 U.S.C. § 170(c)(2), and, to that extent, judgment is entered against defendant and in favor of plaintiff, and plaintiff's complaint for a declaration is granted."

Currently, Saint Matthew's Churches performs regular worship services at its churches located in New York, New York, and Houston, Texas. The good faith character of Saint Matthew's Churches, Inc., as a church is not subject to reasonable dispute. Neither the plaintiff nor any other individual has standing to attack the good faith of Saint Matthew's Churches or any other Church. *In re United States Catholic Conference v. Baker*, 885 F.2d 1020, 1021 (2d Cir. 1989).

If the defendants are to be tried for the truth or falsity of their religious beliefs, then let them be tried for these, but not in a secular court. They believe God answers prayers. They believe God answers the prayers that they pray and they believe that the prayers they pray will be answered. They believe in miracles. They do not believe that they or any mortal has ever performed a miracle of any kind and have never claimed that they have performed a miracle. They believe that God speaks to their hearts and minds and leads them in everything they do. The plaintiff's statements concerning the beliefs and actions of the defendants contained in their opposition are not only outside the record, but also are false.

CONCLUSION

In her opposition brief, plaintiff Valerija Kachavos has failed to respond adequately to the issues and contentions set forth in the defendants' pending petition for a writ of certiorari. She has failed to address the issues as framed by the defendants and petitioners. She has failed to present any valid argument for denial of certiorari.

For the reasons set forth above, the defendants and petitioners respectfully request that this Court grant their petition for a writ of certiorari. Their rights established by the Constitution and laws of the United States, and by the decisions of this Court, are at stake.

Respectfully submitted,

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